

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

____ Jonathan Wells _____,
Individually and on behalf of all others
Similarly situated

Plaintiff,
vs.

CIVIL NO. 20-1203LF/SCY

____ Midwest Recovery Services, LLC Et Al,
Defendant.

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to FED. R. CIV. P. 26(f), a meeting was held on 2/2/2021 at 4:00 PM and was attended by:

Yaakov Saks for Plaintiff(s)

Gregory D. Steinman for Defendant(s)

NATURE OF THE CASE

Plaintiff brings a class action lawsuit under the Fair Debt Collection Practices Act with respect to a collection letter the Defendant sent to him

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiff intends to file: Motion for Summary Judgment

Plaintiff(s) should be allowed until 2/28/2021 to move to amend the pleadings and until 2/28/2021 to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

Defendant intends to file: Motion for Summary Judgment to deny class certification.

Defendants(s) should be allowed until March 31, 2021 to move to amend the pleadings and until March 31, 2021 to join additional parties in compliance with the requirements of Fed. R. Civ. P. 15(a).

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to further stipulate to the following facts: Defendant sent a letter to plaintiff on or about _____.

The parties further stipulate and agree that the law governing this case is: 15 U.S.C. 1692 et seq.

PLAINTIFF'S CONTENTIONS:

This case is based on a FDCPA violation contained in a letter sent from Defendant to Plaintiff. The Letter states: "This Letter is sent on behalf of the current creditor listed above, regarding the amount that is now owed on the above referenced debt. The amount due is \$300.00. If eligible, this account may be reported to all 3 of the major credit bureaus as a collection account. If you wish to know if your account is being reported, you may contact our office at the toll-free number provided." Defendant knows exactly which accounts are eligible to be reported and can let the Plaintiff know in their Letter if the account is being reported. Instead, Defendant deceptively attempts to lure the Plaintiff into a phone call by not providing information they already know regarding credit reporting unless a phone call is made in order to pressure the Plaintiff into making immediate payment. It is deceptive to withhold information in a deceptive manner to try to get a consumer to call a debt collector. In addition, Defendant refers to an original creditor and current creditor that are one and the same and therefore have not provided Plaintiff with a proper initial communication letter. Plaintiff therefore alleges violations of 1692e and §1692f and § 1692g.

DEFENDANT'S CONTENTIONS

Defendant generally denies plaintiff's contentions. Defendant was not acting as a "debt collector" with respect to this particular transaction. Class certification is not appropriate.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan: (*Use separate paragraphs or subparagraphs as necessary if parties disagree.*)

List all witnesses who, at this time, you think will either testify or be deposed, giving their name, title, address and a brief summary of their testimony. It is insufficient to list witnesses' addresses, save for clients, "in care of counsel."

Plaintiff, Jonathan Wells, may testify regarding the circumstances surrounding the letter. Plaintiff's remaining witnesses will be produced through discovery and at this time Plaintiff cannot identify future witnesses.

List all documents which you believe, at this time, will be exhibits at the trial.

Plaintiff – the collection letter in question will be an exhibit at trial. The rest of the documents will be produced through discovery.

List all experts who you believe, at this time, will testify at the trial, giving their name, address, area of expertise, and a brief summary of the anticipated testimony.

Plaintiff does not believe experts are applicable to this case.

Discovery will be needed on the following subjects: (*Brief description of subjects on which discovery will be needed.*)

Class size and scope; policies and procedures of Defendant

Maximum of 25 interrogatories by each party to any other party. (Responses due 30 days after service).

Maximum of 25 requests for admission by each party to any other party.
(Response due 30 days after service).

Maximum of 2 depositions by Plaintiff(s) and _____ by Defendant(s).

Each deposition (other than of _____) limited to maximum of 7 hours
unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by _____ N/A_____

from Defendant(s) by July 15, 2021

Supplementation under Rule 26(e) due _____N/A_____ (*set time(s) or interval(s)*).

All discovery commenced in time to be complete by _August 20. 2021.

Other Items: (*Use separate paragraphs or subparagraphs as necessary if other parties disagree.*)

Defendant requests that discovery be conducted in two phases with the first phase devoted to class certification and plaintiff's individual claims. If a class is certified, Defendant requests the opportunity to conduct additional discovery.

PRETRIAL MOTIONS

Plaintiff intends to file: Motion for Summary Judgment

Defendant intends to file: Motion for Summary Judgment on Class Certification.

ESTIMATED TRIAL TIME

The parties estimate trial will require _____2-3_____ days.

 This is a non-jury case.

X This is a jury case.

The parties request a pretrial conference in late 2021.

SETTLEMENT

The possibility of settlement in this case is considered likely (unlikely) (cannot be evaluated prior to ruling on class certification) The parties request a settlement conference one month after the close of discovery.

EXCEPTIONS

(Where counsel cannot agree to any recitation herein, exceptions shall be listed.)

APPROVED WITH/WITHOUT EXCEPTIONS
(note exceptions above)

/s/ Yaakov Saks
For Plaintiff

/s/ Gregory Steinman
For Defendant

Other Party